

Public Participation and Access to Information (Indicator 50)¹

Extent to which legal framework . . . Provides Opportunities for Public Participation in Public Policy and Decisionmaking Related to Forests and Public Access to Information

Rationale and Interpretation

Forests may be managed more sustainably if citizens have responsibility for their use, management, and protection. If through active influence, citizens are given an opportunity to identify areas of opportunity and concern over forests, they are more likely to support the management of forests and the principles of sustainability as might be incorporated therein. In a broader context, public participation processes can foster practical and political support for sustainable management. Access to timely, complete, and accurate information about forests, forest resources, and socioeconomic trends will enhance these participatory processes. Public participation can foster political support for sustainable management.

The indicator seeks to determine capacity for fostering dialogue and interchange between the public and government on forest and forest-related issues. Interpretation of the indicator should seek to describe the legal and programmatic capacity to carryout public participation activities and how effectively this capacity is being applied toward achievement of sustainable forest management and conservation. Useful information for measuring the indicator includes laws, ordinances, and rules authorizing the development and implementation of public participation processes; descriptive features of implemented public participation processes (number, extent of use, accessibility, required versus optional, notification approaches, process for responding to public comment); opportunities for public initiative and referendum; legal and administrative opportunities for access to formal administrative and judicial systems for dispute resolution; administrative structures for complying with “freedom of information” requirements; records of formal disputes engaged in and legal actions taken by the public; and surveys of stakeholders and interest groups reporting the adequacy of participatory processes (Roundtable on Sustainable Forestry 1999).

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Conceptual Background

Public participation has grown to become a routine and integral part of the land management and related activities of nearly all public resource agencies. In concept, public participation pertains to those processes by which can citizens engage in the development and implementation of public policies and programs focused on forests. It involves processes that embody democratic principles of interactive bargaining, negotiating, and mediation between constituents and managers. Via public participation processes, all steps involving management decisions — problem identification, data collection, analysis, alternative formulation, and choice — are open to involvement by the public and various segments thereof.

Public participation has been described in a multitude of ways. For example, Cortner and Shannon (1993) succinctly describe public participation as a “mechanism of politics.” The Federal Land Policy and Management Act defines public participation as “. . . the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.” (Table 1; Title 43). In a more elaborate manner, Daniels and Walker(1998) defines public participation from an end-product perspective, namely “. . . public participation provides a forum whereby scientific information and values of the publics and the agency can be integrated so that decisions are viewed as both desirable and feasible.”

The difficulties involved in defining the public in public participation are alluded to by Dresang and Gosling (1999), “. . . it is somewhat difficult to separate the discussion of who is participating from how they are participating.” Is the public composed of those who provide comments from afar or is the public composed of those to be directly affected (stakeholders) by the results of an agency’s decision or by the product of a collaborative exercise (Cortner 1995)? The definition of public participation is further muddled by the vast array of approaches by which the public can actually participate in decision processes (engage in the electoral processes, testify at hearings and meetings, serving on advisory committees, direct contact with public officials, expressing views and opinions through the media, and engaging in some form of protest action) (Dresang and Gosling 1999).

Use of the phrase “public participation” (as suggested by this indicator) is not the only label that purports to denote the engagement of the public in decisions regarding the sustainable use and management of forest resources. Although the phrase may be widely recognized by users and managers of forests, there are a multitude of additional words and expressions that may denote the same concepts and principles as might be embodied in notions of public participation. For example, collaboration, public involvement, participatory democracy, community-based involvement, and consensus

building. This multiple labeling of the same or similar concepts can lead to confusion in the quest for information that satisfactorily describes institutional capacity to carryout “public participation” and in the public’s perception of opportunities to participation in government decisionmaking.

Public participation processes are enticing to citizens, public officials, and scholars. For resource managers, public participation processes have special allure because they provide a framework of participatory democracy that can be used to guide decisions regarding the sustainable management of forest resources. For citizens, public participation offers promise of fostering local decisionmaking and of providing for locally appropriate solutions to important resource concerns (Carr and Halversen 2001). These and related interests have been incorporated into a variety of goals for public participation including the achievement of (Cortner 1995): broad notions of democracy (move from representative to participatory democracy), political equity among client groups, accountability among government officials, specific political goals and objectives, change in fundamental agency behavior, more environmentally sensitive decisions, citizen support for agency missions and activities, better educated and informed interests, and resolution of conflict and political struggles over the use, management and protection of forests. Others have given similar reasons and goals for public involvement (McClaran and King 1999, Shindler and others 1999, Smith and McDonough 1999 and 2001, Tuler and Webler 1999, Williams and Tipple 1990).

Public participation processes are effective in accomplishing desired goals and objectives (such as those listed above) to the extent they are consistent with agreed-to principles of sound participatory management. Although not exclusive nor exhaustive of the subject (Carpenter and Kennedy 1988, Gray 1989, Keltner 1994, Moore 1996, Susskind and others 1999, Williams and Ellefson 1997), the following have been suggested as qualities of a well-designed participatory process: inclusive, sincere leadership, innovative and flexible, fosters early and continuous involvement, results in positive actions toward agreed-to goals (Shindler and others 1999); meaningful representation, appropriate involvement in decisions, thoughtfulness and due consideration, logical procedures and outcomes, and actions consistent with participant desires (Smith and McDonough 2001); good information, good leadership, spectrums of interests involved, incentives to explore creative solutions, welcome diverse personalities, and foster a sense of ownership and commitment (Wondolleck and Yaffee 2000); access to processes, power to influence process and outcomes, access to information, promotion of constructive interactions, facilitation of constructive behaviors, adequate and focused analyses, and the enabling of social conditions necessary for future application of participatory processes (Tuler and Webler 1999). Just as there are characteristics which aid in creating an effective participatory process, there are factors which can limit effectiveness, including mistrust of agency’s commitment to public participation, complexity of forest management issues, polarization of interest groups, and group political power used to delay administrative processes (Gerlicke and Sullivan 1994).

Current Legal Capacity

Private Sector Capacity

Private sector legal capacity for public participation may not be directly relevant to this review of information about public participation legal capacities. Purely private action to seek public participation in policy or program development is typically motivated by private self-interest (typically market driven) and the benefits that might further such interests. For example, a wood-based company might seek public comment on its proposed strategic plan for the use and management of industrial timber land; an organized special interest group might seek comment to determine the intensity of public interest in the group's proposed advocacy plans; and a private consulting organization may proceed to initiate public participation actions as an agency-imposed requirement of a government contract.

The 1966 Seventh American Forest Congress is an example of one of the Nation's largest private initiatives in public participation. The Congress was designated to be a citizen initiative that would "... make explicit the Nation's demand for ecologically sound, economically viable, and socially responsible management of forests." Via a people's Congress, citizens were able to develop a shared vision, a set of principles, and a variety of recommendations for action. These shared visions, principles, and recommendations were to form a cohesive and secure platform for the future of America's forests. Fifty-two roundtables were organized and carried out, 37 collaborative meetings were held, and 575 responses were received from individuals. In total, an estimated 4,000 persons participated in pre-Congress activities. Of this total, 2,600 participated in roundtable sessions, 800 were party to a collaborative meeting, and 575 individuals presented their vision, principles, and next steps for America's forests. More than 6,200 individual statements of vision, principle, next steps, and unresolved issues were generated prior to the Congress – the roundtables alone generated 2,000 such statements. The national Congress itself involved nearly 2,000 persons from all regions of the Nation (Ellefson and MacKay 1996).

Federal Government Capacity

Federal capacity (legal framework) for public participation is largely a product of legislation and rulemaking occurring during the last 50 years. A major milestone was the public participation requirements called for by the Administrative Procedure Act of 1946 (as amended in 1976), followed soon thereafter by a number of social welfare laws requiring various approaches to public sharing of agency responsibilities (examples are the Housing Act of 1954 and the Economic Opportunity Act of 1964, which authorized many War on Poverty programs). Growing public sentiment for agency-public interaction generally in the 1950s and 1960s, lead citizens and Federal agencies to promote laws, rules, and directives encouraging public participation in natural resource decisions. By 1966-67, 7 Federal legal mandates for public participation existed, 23 by

1970-71, and 81 by 1971-72 (Cortner 1995). In 2001, at least 23 chapters of the U.S. Code of Federal Regulations set forth public participation requirements for Federal actions involving forest and related natural resources (Table 1). These as well as the more general statutory requirements for public participation have had a significant effect on the use and management of forests and related resources. Especially notable in this respect are the Freedom of Information Act of 1966, National Environmental Policy Act of 1969, Federal Advisory Committee Act of 1972, Forest and Rangelands Renewable Resources Planning Act of 1974, Federal Land Policy Management Act of 1976, Government in the Sunshine Act of 1976, National Forest Management Act of 1976, and the Negotiated Rulemaking Act of 1990 (Table 1).

Table 1. U.S. Code of Federal Regulations Requirements for Public Participation Processes Involving Forest and Related Resources. 2001.

TITLE 16 – CONSERVATION

Chapter 1 – National Parks, Military Parks, Monuments, and Seashores

Subchapter I – National Park Service

Sec. 1a-5. Additional areas for National Park System: “Each study under this section shall be prepared with appropriate opportunity for public involvement, including at least one public meeting in the vicinity of the area under study, and after reasonable efforts to notify potentially affected landowners and State and local government.”

Subchapter LX – National Military Parks

Sec. 430-g. Advisory Commission: “Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area affected by the park. Advisory Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.”

Subchapter LXIX – Outdoor Recreation Programs

Part B – Land and Water Conservation Fund

Sec. 4601-8. Financial assistance to States: “That no plan shall be approved unless the Governor of the respective State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with others, criteria for public participation, which criteria shall constitute the basis for the certification by the Governor.”

Part E – Reclamation Recreation Management

Sec. 4601-33. “Management of reclamation lands shall be developed with appropriate public participation.”

Table 1. (Continued).

Chapter 2 – National Forests

Subchapter I

Sec. 479a. Conveyance of National Forest System lands for educational purposes: ... an opportunity for public participation in a disposal under this section has been provided, including at least one public hearing or meeting, to provide for public comment.”

Subchapter II – Scenic Areas

Sec 541b. Boundaries of scenic-research area; adjustments to subarea boundary; development of management plan; establishment of subareas; management objectives: Provided, that, from time to time, the Secretary may, after public hearing or other appropriate means for public participation, make adjustments in the boundaries of subareas to reflect changing natural conditions or to provide for more effective management of the Area and each of the subareas in accordance with the purposes and provisions of the subchapter.” “As soon as practicable after December 22, 1974, the Secretary shall, with provisions for appropriate public participation in the planning process, develop a comprehensive management plan for the Area.”

Sec. 544d. Scenic area management plan: “The Secretary and the Commission shall conduct public hearings and solicit public comment prior to the final adoption of land use ordinances.”

Sec. 546a-1. Administration and management: “In preparing the management plan, the Secretary shall consult with appropriate State and local government officials, provide for full public participation, and consider the views of all interested parties, organizations, and individuals.”

Chapter 5A – Protection and Conservation of Wildlife

Subchapter III – Endangered Species of Fish and Wildlife

Sec. 668dd. National Wildlife Refuge System: “The public should be given a full and open opportunity to participate in decisions regarding acquisition and management of National Wildlife Refuges.” “...ensure appropriate public involvement opportunities will be provided in conjunction with refuge planning and management activities”

Chapter 5B – Wildlife Restoration

Sec. 669. Cooperation of Secretary of the Interior with States: “...to encourage State fish and wildlife agencies to provide for public involvement in the process of development and implementation of a wildlife conservation and restoration program.”

Sec. 669c. Allocation and apportionment of available amounts: ...provisions to ensure public participation in the development, revision, and implementation of projects and programs required under this paragraph. A State shall provide an opportunity for public participation in the development of the comprehensive plan required under paragraph (1).”

Chapter 6 – Game and Bird Preserves; Protection

Sec. 698r. Administration: “The secretary shall develop and conduct a program to promote and encourage awareness of and participation in the development of the general management plan for the

Preserve by persons owning property in the vicinity of the Preserve, other interested groups and individuals, State, county, and municipal agencies, and the general public.” “In preparing and implementing the plan described in paragraph (1), the Secretary shall give full consideration to the views and comments of the individuals, groups, and agencies described in paragraph (1).”

Sec. 698u-5. Advisory Committee: “Meetings shall be held at such locations and in such a manner as to ensure adequate opportunity for public involvement. In compliance with the requirements of FACA, the advisory Committee shall choose an appropriate means of providing interested members of the public advance notice of scheduled meetings.”

Chapter 7 – Protection of Migratory Game and Insectivorous Birds

Subchapter I – Generally

Sec. 701. Game and wild birds; preservation: “These protocols may be incorporated into existing actions; however, the MOU shall recognize that the agency may not be able to implement some elements of the MOU until such time as the agency has successfully included them in each agency’s formal planning process (such as revision of agency land management plans, land use compatibility guidelines, integrated resource management plans, and fishery management plans), including public participation and NEPA analysis, as appropriate.”

Chapter 27 – National Trails System

Section. 1244. National scenic and national historic trails: “The Secretary of the Interior shall – (i) encourage communities and owners of land along the trail, native Hawaiians, and volunteer trail groups to participate in the planning, development, and maintenance of the trail;”

Chapter 28 – Wild and Scenic Rivers

Sec. 1274. Component rivers and adjacent lands: “Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.”

Sec. 1276. Rivers constituting potential additions to national wild and scenic rivers system: “For purposes of such river studies, the Secretary shall consult with each River Study Committee authorized under section 5 of the Michigan Scenic Rivers Act of 1990, and shall encourage public participation and involvement through hearings, workshops, and such other means as are necessary to be effective.”

Chapter 32 – Marine Sanctuaries

Sec. 1445a. Advisory Councils, Public participation and procedural matters: The following guidelines apply with respect to the conduct of business meetings of an Advisory Council: (1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda. (2) Emergency meetings may be held at the call of the chairman or presiding officer. (3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register. (4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.”

Table 1. (Continued).

Chapter 33 – Coastal Zone Management

Sec. 1455. Administrative grants: “Management program provides for public participation in permitting processes, consistency determinations, and similar decisions.”

Sec. 1455b. Protecting coastal waters: “Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.”

Sec. 1458. Review of performance: “In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.”

Chapter 35 – Endangered Species

Sec. 1535. Cooperation with States: “...provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; provision is made for public participation in designating resident species of plants as endangered or threatened;”

Chapter 36 – Forest and Rangeland Renewable Resources Planning

Subchapter 1 – Planning

Sec. 1600. Congressional findings: “...to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use Sustained-Yield Act of 1960, and public participation in the development of the program;”

Sec. 1601. Renewable Resource Assessment: “In developing reports ... the Secretary shall provide opportunity for public involvement and shall consult with other interested governmental departments and agencies.”

Table 1. (Continued).

Sec. 1604. National Forest System land and resource management plans: “The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions.”

Sec. 1611 Timber: “Plans for variations in the allowable sale quantity must be made with public participation as required by section 1604(b) of this title.”

Sec. 1612. Public participation: “In exercising his authorities under this subchapter and other laws applicable to the Forest Service, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.” “In providing for public participation in the planning for and management of the National Forest System, the Secretary, pursuant to the Federal Advisory Committee Act and other applicable law, shall establish and consult such advisory boards as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards shall be representative of a cross section of groups interested in the planning for and management of the National Forest System and the various types of use and enjoyment of the lands thereof.” “In accordance with this section, the Secretary of Agriculture, acting through the Chief of the Forest Service, shall establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Resources Planning Act of 1974 and shall modify the procedure for appeals of decisions concerning such projects.” “Prior to proposing an action referred to in subsection (a), the Secretary shall give notice of the proposed action, and the availability of the action for public comment by (A) promptly mailing notice about the proposed action to any person who has requested it in writing, and to persons who are known to have participated in the decisionmaking process; and (B)(i) in the case of an action taken by the Chief of the Forest Service, publishing notice of action in the Federal Register; or (ii) in the case of any other action referred to in subsection (a), publishing notice of action in a newspaper of general circulation that has previously been identified in the Federal Register as the newspaper in which notice under the paragraph may be published. (2) Comment – The Secretary shall accept comments on the proposed action within 30 days after publication of the notice in accordance with paragraph (1). (c) Right to Appeal – Not later than 45 days after the date of issuance of a decision of the Forest Service concerning actions referred to in subsection (a), a person who was involved in the public comment process under subsection (b) through submission of written or oral comments or by otherwise notifying the Forest Service of their interest in the proposed action may file an appeal. (d) Disposition of an Appeal. – (1) Informal disposition. – (A) In general; – Subject to subparagraph (B), a designated employee of the Forest Service shall offer to meet with each individual who files and appeal in accordance with subsection (c) and attempt to dispose of the appeal. (B) Time and location of the meeting. – Each meeting in accordance with subparagraph (A) shall take place – (i) not later than 15 days after the closing date for filing an appeal; and (ii) at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision. (2) Formal review. – If this appeal is not disposed of in accordance with paragraph (1), an appeals review officer designated by the Chief of the Forest Service shall review the appeal and recommend in writing, to the official responsible for deciding the appeal, the appropriate disposition of the appeal. The official responsible for deciding the appeal shall then decide the appeal. The appeals review officer shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided. (3) Time for disposition – Disposition of appeals under this subsection shall be completed not later than 30 days

Table 1. (Continued).

after the closing date for filing of an appeal, provided that the Forest Service may extend the closing date by an additional 15 days. (4) If the Secretary fails to decide the appeal within the 45-day period, the decision on which the appeal is based shall be deemed to be a final agency action for the purpose of chapter 7 of title 5, United States Code. (e) Stay – Unless the Chief of the Forest Service determines that an emergency situation exists with respect to a decision of the Forest Service, implementation of the decision shall be stayed during the period beginning on the date of the decision – (1) for 45 days, if an appeal is not filed, or (2) for an additional 15 days after the date of the disposition of an appeal under this section, if the agency action is deemed final under subsection (d)(4)."

Chapter 40 – Soil and Water Resources Conservation

Sec. 2004. Continuing appraisal of soil, water, and related resources: "Appraisal shall be made in cooperation with conservation districts, soil and water conservation agencies, and other appropriate citizen groups, and local and State agencies under such procedures as the Secretary may prescribe to ensure public participation."

Chapter 51 – Alaska National Interest Lands Conservation

Subchapter V – Federal-State Cooperation

Sec. 3181. Alaska Land Use Council: "Cooperative agreements established pursuant to this section shall include a plan for public participation consistent with the guidelines..." "The Council shall establish and implement a public participation program to assist the Council to carryout its responsibilities and functions under this section. Such program shall include, but is not limited to – (1) A committee of land-use advisors appointed by the Cochairmen made up of representatives of commercial and industrial land users in Alaska, recreational land users, wilderness users, environmental groups, Naïve Corporations, and other public and private organizations. To the maximum extent practicable, the membership of the committee shall provide a balanced mixture of national, State, and local perspective and expertise on land and resource use issues; and (2) A system for (A) the identification of persons and communities, in rural and urban Alaska, who or which may be directly or significantly affected by studies conducted, or advice and recommendations given by the Council pursuant to this section, and (B) guidelines for, and implementation of, a system for effective public participation by such persons or communities in the development of such studies, advice and recommendations by the Council."

Chapter 54 – Resource Conservation

Subchapter V – Resource Conservation

Sec. 3452. Definitions: "The term 'planning process' means the continuous effort by any State, local unit of government, or local nonprofit organization to develop and carryout effective resource conservation and utilization plans for a designated area, including development of an area plan, goals, objectives, policies, implementation activities, evaluations and reviews, and the opportunity for public participation in such efforts."

Chapter 63 – Federal Cave Resources Protection

Sec. 4303. Management actions: "... foster communication, cooperation, and exchange of information between land managers, those who utilize caves, and the public."

Table 1. (Continued).

Chapter 71 – Atlantic Coastal Fisheries Cooperative Management

Sec. 5104. State implementation of coastal fishery management plans: "... the Commission provides adequate opportunity for public participation in the plan preparation process, including at least four public hearings and procedures for the submission of written comments to the Commission."

Chapter 80 – Neotropical Migratory Bird Conservation

Sec. 6106. Cooperation: "(A) Meetings – The advisory group shall – (i) ensure that each meeting of the advisory group is open to the public; and (ii) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda. (B) Notice – The Secretary shall provide to the public timely notice of each meeting of the advisory group. (C) Minutes – Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public."

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

Chapter 26 – Water Pollution Prevention and Control

Subchapter I – Research and Related Programs

Table 1. (Continued).

Sec. 1251. Congressional declaration of goals and policy: "Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

Subchapter III – Standards and Enforcement

Sec. 1329 Nonpoint source management programs: "...describes the process, including intergovernmental coordination and public participation, for identifying best management practices..."

Chapter 27 – Ocean Dumping

Subchapter I – Regulation

Sec. 1414b. Ocean dumping of sewage sludge and industrial waste: "The Administrator shall provide an opportunity for public comment regarding the establishment and implementation of compliance agreements and enforcement agreements entered into pursuant to this section."

Chapter 29 – Deep Water Ports

Sec. 1509. Marine environmental protection and navigational safety: "subject to ... and the provision of adequate public involvement, the Secretary shall prescribe and enforce procedures."

Table 1. (Continued).

Chapter 36 – Water Resources Development

Subchapter V – General Provisions

Sec. 2319. Reservoir management: “The Secretary shall ensure that, in developing or revising reservoir operating manuals of the Corps of Engineers, the Corps shall provide significant opportunities for public participation, including opportunities for public hearings.”

TITLE 43 – PUBLIC LANDS

Chapter 12 – Reclamation and Irrigation of Lands by Federal Government

Subchapter I-A – Reclamation Reform

Sec. 390jj. Water Conservation: “The Secretary is authorized and directed to enter into memorandums of agreement with those Federal agencies having capability to assist in implementing water conservation measures to assure coordination of ongoing programs. Such memorandums should provide for involvement of non-Federal entities such as States, Indian tribes, and water user organizations to assure full public participation in water conservation efforts.”

Chapter 35 – Federal Land Policy and Management

Subchapter I – General Provisions

Sec 1702. Definitions: “The term public involvement’ means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.”

Subchapter II – Land Use Planning and Land Acquisition and Disposition

Sec 1712. Land use plans: “The Secretary shall, with public involvement and consistent with the terms of this act, develop, maintain and when appropriate, revise land use plans...” “the Secretary ... shall provide for meaningful public involvement of State and local government officials.” “The Secretary shall allow an

opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of public lands.”

Subchapter III – Administration

Sec. 1739. Advisory councils: “In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, public lands.”

Federal statutory requirements for public participation vary greatly in their requirements and administration (Table 1). Some are very specific in their mandate (for example, for scenic area management plans involving national forests “the Secretary shall conduct public hearings and shall solicit public comment prior to the final adoption of land use ordinances”) while others are less focused and favor greater agency discretion (for example, reclamation recreation management shall “. . . be developed with appropriate public participation”) (Table 1). In other cases the Federal Government places public participation requirements on State governments who must certify that such has occurred if Federal funds are to be made available (for example, Land and Water Conservation Fund financial assistance to States; Wildlife Restoration Program financial assistance to States), while in certain situations Federal agencies engage directly in the development and implementation of public participation processes (for example, land and resource management plans for units of the National Forest System). In addition, some laws are focused on public participation in decisions concerning forests conditions in general (for example, Coastal Zone Management plans, Forest and Rangeland Renewable Resources plans, Federal land Policy and Management plans) while many focus on specific natural resources that may be part of broader forest ecosystems (for example, endangered species, soil and water conservation, trail systems, wild and scenic rivers).

Federal statutory requirements for public participation are expressed in a variety of ways, including procedures for rulemaking, conditions for agency issuance of permits, requirements for public meetings, public access to information, and processes for developing and implementing plans. From a *rulemaking* perspective, the Administrative Procedures Act (APA) is instrumental in that it grants citizens “the right to petition for the issuance, amendment, or repeal of a Federal rule.” Although the law does not require specific procedures for agencies to handle petitions, it does require that agencies provide for notice and comment of proposed regulations or changes to existing regulations. The process involves agency development of a proposed regulation (generally without or with limited public involvement), publication of the proposal in the Federal Register (along with a procedure for filing comments and a time period during which written comments will be received), review of and, as agency considers appropriate, incorporation of public comments in a final rule again to be published in the Federal Register. The Act specifies the period for public comment to be “reasonable” (other statutes may specify a set period of time for comments, example being the Safe Water Drinking Act), but does not require agencies to conduct public hearings (other statutes may require hearings, such as in the Resource Conservation and Recovery Act). Furthermore, the Act does not specify a deadline for issuance of a final rule, but requires agencies to conclude matters “within a reasonable time.” Judicial review of agency rulemaking activities is authorized by the Administrative Procedures Act.

Federal capacity for public participation in rulemaking is also fostered by the Negotiated Rulemaking Act of 1990. The latter specifies legal avenues for the public, generally representatives of stake-holding interest groups, to engage in various conflict

management processes (bargaining, negotiation, mediation) considered relevant to the establishment of rules and regulations. The Act provides a framework for facilitating development of a consensus among stakeholders, a framework which reportedly reduces the often extended period of time involved in rule making activities and the frequency, intensity, and cost of litigation brought forth when stakeholders fail to engage in consensus-building processes. Other benefits attributed to the Act include opportunity to identify innovative rules, greater understanding of real-world impacts of proposed rules, and more successful implementation as a result of cooperative relationships established between an agency and the parties affected by the rules (Ellefson and others 1995).

Provisions for public participation may also be called for by *Federal permitting* processes. For example, the Clean Water Act requires agencies to provide public notice of a permit application for the discharge of water pollutants. However, most environmental statutes do not specifically require opportunity for public comment on permit applications. Instead, agencies may offer public comment opportunities under authority granted by their existing rulemaking processes generally. In some respects, environmental impact statements may be viewed as permits. In such a context, the National Environmental Policy Act provides for public participation in the Federal environmental impact assessment process. Even though the Act does not specifically require public participation at all stages in the development of an environmental impact statement, the Council of Environmental Quality has set forth regulations requiring agencies to facilitate public participation throughout the process. Agencies are required to notify the public of its intent to prepare an environmental impact statement and to allow citizens to participate in the various stages of the statement's development. By authority of the Administrative Procedures Act, citizens may also litigate against the preparation of an environmental impact statement.

Another source of institutional capacity to engage the public in agency activities are *public meeting* laws, of which two Federal laws are of particular interest, namely the Government in the Sunshine Act and the Federal Advisory Committee Act. The former requires "every portion of every meeting" of certain Federal agencies to be posted in advance and open to the public. The law does not require agencies to solicit public participation, but only requires that the public be allowed to attend meetings where government business is discussed. The Federal Advisory Committee Act governs the establishment, operation, and administration of advisory committees, requiring that the public be notified of all meetings and that such meetings will be open to the public. As with the Government Sunshine Act, the Act makes no legal requirement for public participation, only providing a guarantee that the public can be present at committee meetings.

Another form of institutional capacity for public participation stems from statutes that provide for *public access to information*. The most prominent of such laws is the Freedom of Information Act, which makes nearly all records of Federal agencies

available to the public. Exceptions are information about national defense, internal personnel rules, trade secrets, medical and personnel files, law enforcement records, information used to oversee financial institutions, geologic information, information exempted from disclosure by another statute, and agency memorandum otherwise unavailable by law. The guarantee of access to information was expanded in 1990 by the Disclosure Provision for Research Data, which makes available to the general public the results of certain research generated from Federal grants. The Emergency Planning and Right-To-Know Act also guarantees public access to information by enabling citizens to participate in determining who needs an emergency response plan and how such plans should be developed. The law also guarantees public access to a number of types of reports and documents, including the emergency notification of a release, material data safety sheets, emergency and hazardous chemical inventory forms, and toxic chemical release forms and toxic release inventories.

Also relevant to the public's ability to participate in agency processes are a number of Federal laws that require or (strongly suggest) public involvement in *planning processes*. Examples are the Federal Land Policy and Management Act of 1976, Forest and Rangelands Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976. These acts include provisions which require the administering agency to include the public in developing management plans for specified Federal lands. In the case of the National Forest Management Act, provisions are specifically made for the public to appeal national forest land management plans (Gericke and Sullivan 1994). Between 1996 and January 2002, 40 Washington Office appeals decisions regarding land and management plans had been made while at the agency's regional level the number of appeal decisions since 1996 probably approaches 2,000 (for example, 14 appeal decisions involving the Bitterroot National Forest, 54 involving the Superior National Forest, and 84 involving the Sawtooth National Forest).

State Government Capacity

Since the 1960s, States have made explicit and specific commitment to citizen accessibility to government, doing so by passing laws requiring State agencies and local governments to have open meetings and open records except where necessary to protect the privacy rights of individuals. Forty-nine States have open meeting laws that apply to the legislative and executive branches at both the State and local government levels (courts are excluded from open meeting laws). Of these States, 41 require advance notice of meetings, 37 obligate agencies to keep minutes, and 31 States do not recognize any action as official unless it occurs at an open meeting. Officials who meet in secret may be personally fined or otherwise punished in 35 States. Complementing open meeting laws are open record laws (freedom of information laws) which all States have established. Such laws establish the right of individuals to see the written records of government, often at a cost to those making the request (Dresang and Gosling 1999). The extent to which open meeting and open record laws are applied in forest and natural resources setting is unknown.

Table 2. Legal Authority of State Governments for Initiative and Popular Referendum, State and Type of Authority. 1998.

State	Direct Initiative	Indirect Initiative	Popular Referendum
Alabama			X
Alaska	X		X
Arizona	X		X
Arkansas	X		X
California	X		X
Colorado	X		
Florida	X		
Idaho			X
Illinois	X		
Kentucky			X
Maine		X	X
Maryland			X
Massachusetts		X	X
Michigan	X	X	X
Missouri	X		X
Montana	X		X
Nebraska	X		X
Nevada	X	X	X
New Mexico			X
North Dakota	X		X
Ohio	X		X
Oklahoma	X		X
Oregon	X		X
South Dakota	X		X
Utah	X	X	X
Washington	X	X	X
Wyoming	X	X	

Source: Dresang and Gosling 1999.

State governments have also established formal ways in which citizens can take direct action beyond electing officials or trying to influence them once they are in office. Twenty States provide for direct initiatives wherein citizens are empowered to make or change State laws (Table 2). In such cases, a specified number of signatures of registered voters are required in order for a proposition to be placed on the ballot. In seven States, citizen initiatives are more indirect, namely requiring a successful petition to be submitted to the State legislature which can adopt the position as received, place it on a ballot unaltered, or modify the proposition before placing it on a ballot. Also, a tool empowering citizen participation is State referendum procedures. Such procedures enable voters to reject laws enacted by a State legislature or advise legislatures on important issues; referendum authority exists in 23 States,

Table 3. State Government Governing or Advisory Bodies Influencing the Use, Management or Protection of Forests, by State and Unit Name. 2000.

Region and State	Governing or Advisory Body Name Number of Bodies					Total
	Board	Council	Committee	Commission	Other	
North						
Connecticut		1				1
Delaware						
Illinois	4	1		1		6
Indiana	1	1		2	1	5
Iowa	1		1	2		4
Maine	6	2		1		9
Maryland	1	2	2	7	1	13
Massachusetts	1					1
Michigan	3	1	1	4		9
Minnesota	3	1				4
Missouri		1	2	8		11
New Hampshire	4	1	1			6
New Jersey	1	2		4		7
New York	2		1			3
Ohio		1		2		3
Pennsylvania	1	3	1	1		6
Rhode Island	1	1				2
Vermont	5	3	1			9
West Virginia	5			1		6
Wisconsin	5	2				7
Total	44	23	10	33	2	112
South						
Alabama	1		1			2
Arkansas				3		3
Florida		1				1
Georgia				1		1
Kentucky	5	3	1	5	1	15
Louisiana		2	1	1		4
Mississippi	1			1		2
North Carolina	1			3		4
Oklahoma	1			3		4
South Carolina		2		2		4
Tennessee				1		1
Texas	1					1
Virginia	8					8
Total	18	8	3	20	1	50
West						
Alaska	3					3
Arizona	1					1
California	4	1		4		9
Colorado	3			1		4
Hawaii		1		4		5
Idaho			1	2		3
Kansas			1	2		3
Montana	2	1	2	1		6
Nebraska				2		2
Nevada	2	1		2		5
New Mexico	1			3		4
North Dakota	5	2	3	2		12
Oregon	5			8		13
South Dakota				2		2
Utah				1		1
Washington	3		1	3		7
Wyoming	1	1	2	2		6
Total	30	7	10	39	0	86
TOTAL	92	38	23	92	3	248

Note: Other units are: Indiana Natural Resources Foundation (Department of Natural

Resources); Maryland Environmental Trust; and Kentucky Agricultural Water Quality Authority (Department of Agriculture).
Source: Ellefson and others 2001.

which enables voters to reject laws enacted by a State legislature. In some States, citizens also have access to advisory referendums (voters provide advice to a legislature). As for the use of initiative procedures by the public in general, during the period 1981-1992 327 citizen-prompted initiatives appeared on State ballots (California – 65 initiatives, Oregon – 44, Colorado – 24, Arizona – 20) (Public Affairs Research Institute 1992). The extent to which initiatives and referendums are used as tools for public participation involving forest and related natural resources is largely unknown. Where used, they often generate significant interest and controversy. Examples are California's 1980s initiatives to limit the application of certain forest practices and Oregon's 2000 initiative requiring payments to landowners for government imposed regulation that reduces property values (Oregon Secretary of State 2000).

State governments also have a myriad of laws, rules, and administrative directives that specifically require public participation in forest resource decisions (planning, permitting, rulemaking) and authorize citizen access to government information about forests. Again, the extent of this capacity has not been systematically documented. However, a 1987 survey of citizen groups and various government officials engaged in forest resource planning found that State forest resource planners recognized public involvement as a critical component of statewide planning and that a high percentage (56 percent) felt that the public participation was adequate and appropriate (Gray and Ellefson 1987). Such would indicate that there exists some degree of State legal and institutional capacity fostering public participation in State forestry matters.

State governments have also seen fit to establish governing or advisory entities through which the public can participate in agency activities. Responsibilities assigned to such bodies can range from providing advice on program development and implementation, to being legally responsible for directing and managing a particular unit of government. Often, but not always, they are composed of interested citizens appointed by a State's governor or by the chief administrator of the entity to which the body is to provide advice or exercise governance. In 2000, States had created 248 governing or advisory bodies that in one fashion or another influence the use, management, and protection of forests (Table 3). Variouslly labeled as "boards" (Wyoming Board of Land Commissioners), "councils" (South Carolina Interagency Council on Natural Resources Policy), "committees" (Michigan Soil Conservation Committee), or "commissions" (West Virginia Commission on Tourism) (examples Table 4), an average of five such entities existed in each State, with the South having noticeably fewer (3.8) than the North, which led in such a measure (5.6). Kentucky is at the forefront in the number of advisory-governing bodies directed in some manner

Table 4. State Government Governing or Advisory Bodies (examples) Influencing Use, Management and Protection of Forests. 2000.

<ul style="list-style-type: none"> • Board of Registered Foresters • State Parks Board • Natural Heritage Commission <ul style="list-style-type: none"> • Pollution Control and Ecology Commission • Soil and Water Commission • Energy Commission • Wildlife Conservation Board • Water Resources Control Board • Biodiversity Council <ul style="list-style-type: none"> • Board of Forestry and Fire Protection • Forest Resources Council <ul style="list-style-type: none"> • Economic Development Commission • Council on Environmental Quality <ul style="list-style-type: none"> • Commission on Water Resources Management • Commission on Animal Species • Board of Land Use Appeals <ul style="list-style-type: none"> • Commission on Natural Area Preserves • Forest Products Commission • Pollution Control Board <ul style="list-style-type: none"> • Endangered Species Protection Board • Hardwood Development Council <ul style="list-style-type: none"> • Natural Resources Ethics Commission • Rural Development Council <ul style="list-style-type: none"> • Environmental Protection Commission • Forestry Commission 	<ul style="list-style-type: none"> • Economic Development Partnership • Environmental Education Council • Wood Product Competitive Board • Geographic Information Systems Council • Board of Licensure for Professional Foresters • Land Use Regulation Commission • Coastal Resources Management Council • Board of Pesticides Control • Environmental Priorities Council <ul style="list-style-type: none"> • Interagency Council on Natural Resources Policy • Tourism Development Board • Water Monitoring Council • Environmental Science Board • Environmental Quality Board <ul style="list-style-type: none"> • Commission on Hazardous Waste Management • Board of Environmental Review <ul style="list-style-type: none"> • Forest Parks and Recreation Council • Board of Surface Mines <ul style="list-style-type: none"> • Commerce and Economic Growth Commission • State Game Commission <ul style="list-style-type: none"> • Fish and Wildlife Management Board • Community Forestry Council • Wetlands Trust Board • Wildlife and Parks Commission • Council on Ecosystem Management
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Source: Ellefson and others 2001.

toward forest conditions (namely, 15), with Maryland (13), Oregon (13), and North Dakota (12) following close behind. Eight States reported only one advisory or governing body each, while one State (Delaware) reported having no such entities involved in forest matters (Ellefson and others 2001 and 2002).

The institutional and legal capacity for public participation of State governments is also reflected by the extent to which citizens have access to and participate in organized interest groups. Although extensive analyses of citizen group involvement in forest and related resource matters have not been conducted, information about the impact of interest groups at the State level in policy development generally is enlightening. Suggested is the following degree of interest group influence (or effectiveness) within States (Thomas and Hrebenar 1990):

Dominant (overwhelming influence): Alabama, Alaska, Florida, Louisiana, Mississippi, New Mexico, South Carolina and West Virginia

Dominant/Complementary (strong influence but limited by other political actors): Arizona, Arkansas, California, Hawaii, Georgia, Idaho, Kentucky, Montana, Nebraska, Nevada, Ohio, Oklahoma, Oregon, Texas, Utah, Virginia, Washington and Wyoming

Complementary (balanced influence with all political actors): Colorado, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Hampshire, New York, North Carolina, North Dakota, Pennsylvania, South Dakota and Wisconsin

Complementary/Subordinate (some influence but other political actors are primary): Connecticut, Delaware, Minnesota, Rhode Island and Vermont

Subordinate (weak or inconsequential influence): none

Local Government Capacity

Local units of governments often follow the lead of their State counterparts on matters of public access to government decisionmaking. In many cases, local units of governments are bound by State law on such matters (Dresang and Gosling 1999). Unfortunately, comprehensive reviews of the legal and institutional capacity of local governments to engage citizens in local government actions generally, and forest resource matters specifically, have not been systematically nor comprehensively assessed.

Summary of Conditions

Public participation is an important step in determining and accomplishing societal interests in the sustainability of forests. This review of Federal, State, and local levels of government suggests the following:

- Public participation in public agency decisions can be exercised in a variety of ways, ranging from engaging in electoral processes to testifying at public hearings and meetings and from direct involvement in multistakeholder collaboration activities to engaging in some form of challenge or protest action. Because of diversity in resource, social and political conditions affiliated with forests, the range of approaches to public participation is probably intentionally very broad.

- Legal capacity needed for engaging the public in decisions regarding the forest sustainability exists for nearly all State and Federal agencies that have responsibility for forests and related resources. However, the extent to which this capacity is exercised varies considerably within different levels of government and between different agencies.

- Public participation processes are embodied in various legally established administrative structures and procedures. The latter include rulemaking (citizen right to petition regarding proposed rules), permit issuing (citizen right to know and deliberate issuance of proposed permits), planning (citizen right to participate in design of plans and programs), and information (citizen right to access government information).

- Federal authority to initiate public participation activities emanates from forest resource law (for example, National Forest Management Act), environmental (for example, National Environmental Policy Act), and general government administrative law (for example, Administrative Procedures Act). As relates to forests, there is substantial variation in the scope, focus, and intensity of Federal agency capacity stemming from these different legal authorities. Furthermore, Federal legal requirements for public participation are not always comprehensive in that they very often focus on a single resource sector (for example, wildlife, water, recreation) within forests generally.

- State government authority to engage in public participation and related activities emanate primarily from open meeting and open record laws (all but one State has an open meeting law). However, States also authorize public participation in policy development via initiative and referendum (all States have some form of authority for initiative and referendum), citizen service on governing or advisory entities (248 such entities focused on forest resource and related agencies), forest resource planning activities, and participation in interest groups that focus the forest resource interests of many citizens.

- Local units of government often follow their State counterparts on matters of public access to government decisionmaking. The extent of local government legal capacity to carry out public participation activities is largely unknown in general and especially so from a sustainable forestry perspective.

Issues and Trends

Public participation is not without its issues and detractors regarding the sustainable management of forests. The range of fundamental issues raised by such processes is extensive. For example, who is the public and what is its role? What constitutes participation and when should it occur? What is the role for agency officials in resource decisions involving public participation? Of what use is broad citizen involvement in pursuing the elusive “public interest” in forests? What distinctions (if any) should be made between participatory democracy and representative democracy? Should public officials be responsible to elected representatives when determining appropriate policies and directions regarding sustainability? Should legislative authority invested in an agency be devolved to collaborative groups or to a participatory process? Should persons or groups that do not engage in public participation be excluded from future decisions regarding policy selections? Does the public through collaborative

processes have access to necessary scientific and technical expertise? Is conflict (as opposed to agreement and harmony) inherently bad and are local solutions (agreement) preferable to “top-down solutions?” And is their danger in focus on well-functioning collaborative processes at the potential expense of substantive and sound sustainable policies and programs? These and a host of related issues are personified whenever the phrase “public participation” is used by professionals and lay citizens (McCloskey 1996 and 2001, Wellman and Tipple 1990, Wondolleck and Yaffee 2000).

The effectiveness of public participation processes has also been subject for discussion and debate. Frequently of concern is what constitutes a successful or effective public participation process (USDA Forest Service 2002). McCool and Guthrie (2001) suggest at least two measurements: product-oriented dimensions of success (preparation of a plan, implementation of a plan, social, and political acceptability) and process-oriented dimensions of success (two-way learning, responsibility, relationship building, and representation of interests). Although such suggests approaches for analysis, few examinations of effectiveness have been conducted. Those carried out suggest that public participation processes often favor highly educated, older males with higher incomes (Carr, 2001) and that the processes can favor certain segments of the public (70 percent of individuals participating in the 1980 Resources Planning Act process represented commodity or environmental interests) (Baas 1993). Others have focused on participant satisfaction with public participation processes and the costs associated with such processes. McClaran (1999) found that by 1989 all 96 national forest plans had at least 1 appeal and the average was 8.4 appeals per plan. At the time of the study 574 appeals had been resolved at an average cost of \$50,000 per plan. Gerlicke (1994) estimated that public participation in national forest planning on 61 national forests cost the Government \$61 million and required an average of 16 person years of time. These costs do not include those incurred by interest groups and individuals who participated in the planning processes.

The literature devoted to issues and trends involving public participation as focused on forest sustainability is especially rich (for example, Baas 1993, Carr and Halvorsen 2001, Cortner and Shannon 1993, Daniels and Walker 1998, Lawrence and Daniels 1996, McCloskey 1996 and 2001, Moore 1996, Roundtable on Sustainable Forestry 1999, Forest Service 2002, Smith and McDonough 2001, Williams and Ellefson 1997, Wondolleck and Yaffee 2000). Consider the following.

- Declining trust in government institutions generally has often distanced citizens from involvement in civic affairs. Although not always readily apparent, invigorated and more engaging use of public participation may be heightening citizen involvement in government activities and rebuilding a sense of trust in government institutions. Glamorous exceptions of conflict-laden issues aside, there may be a growing sense of citizens being part of a community of interests that are actively and cooperatively determining the use, management, and protection of forests.

- Multiple fragmented interests and the decline of integrative forces in forest resource decisionmaking have led to policy and program impasses that have fostered an increasing interest among agencies' and stakeholders in new approaches for determining how forest resources will be used, managed, and protected. The huge social costs (financial and human energy) associated with such impasses have been a major stimuli to renewed interest and vigor in public participation.

- Decentralization of agency decisionmaking regarding forests and related resources has increasingly fostered a focus on "communities of place," which in turn has fostered greater citizen interest in becoming involved in agency decisionmaking. Citizens that have a tie to each other because they have a common interest in a physical place appear more likely to become active participants in public participation processes.

- Formal processes (public hearings, advisory committees) for engaging the public in agency decisionmaking are increasingly viewed as adversarial in nature and therefore limited in their ability to deal with conflict and discord over appropriate directions for forest sustainability. Agencies are increasingly interpreting their public participation authority to be more interactive and collaborative in nature.

- Public participation in the broader context of participatory and representative democracy is a subject of increasing concern and debate. Notions of sustainable forestry are not immune from this debate. Conflicting philosophies are direct agency engagement of citizens to determine agency roles and directions versus such roles and directions being determined by elected or appointed political officials. Concern over agency failure to exercise leadership in response to legislative mandates is also at issue.

- Effectiveness of public participation, and the relative efficiency of any one approach that might be used to engage the public in agency decisionmaking, is increasingly unclear. Uncertain is whether public participation leads to a better reflection of the broad public interest in sustainable forestry than does other approaches to determining such interest. Analyses of efficiency and effectiveness are often muddled by unclear expectations (or intent) for public participation activities (rulemaking, permit issuance, planning).

- More clearly defining "who is the public" of interest in agency decisionmaking is increasingly a focus of attention. Efforts are being made to be more inclusive of interested parties, involving more than the affected and interested parties. However, the appropriate combination of citizen input and professional expertise remains a difficult and unanswered balancing act within many agencies.

- Scope of application of public participation to sustainable forestry decisions is increasingly of concern, especially as such might be applied to private sector actions. Public participation applied to private forest lands implies that property rights and property tenure arrangements have changed. Similarly, public rights of access to information regarding how private decisions are made also points to privacy and property rights issues (e.g., certification of private forests, remote sensing of private forests).

- Public participation in the form of public access to the courts as a way of addressing issues involving forest sustainability has been favorably addressed in the last four plus decades. Laws and legal decisions have directed courts to be more liberal in who can bring a suit and the type of issues that can be addressed by citizen advocates.

- Interactive public participation (collaborative) processes are increasingly being viewed as effective means of coordinating cross-boundary activities (for example involvement of many programs or many landowner categories). They are also being viewed as effective approaches for undertaking joint management activities (for example, Federal and State fire control activities), mobilizing resources (for example, financial and personnel), and exchanging information and sharing ideas (for example, multi agency information management).

- Public participation processes are becoming more sensitive to growing ethnic and minority interests in forest and related natural resources. The language, traditions and cultural background of such groups have often limited agency efforts to solicit the involvement of such groups in agency decisionmaking (Baas 1993). Conversely, and often because of language, traditions and background, such groups have been reluctant to get involved in agency matters.

Information Adequacy

Specification

Information about public participation and public access to information considered important to forest sustainability has been the focus of attention by many public and private organizations. In 1999, the National Association of State Foresters (1999) sought a better understanding of State forestry agency information concerning public participation. The association reported 3 States with an abundant amount of information concerning public participation, 17 with sufficient information, and 3 with little information for describing such activities. Somewhat troubling was that 27 States had no information concerning public participation and public access to information. As for the quality of information (of States with such information), 4 States reported it was excellent, 17 adequate, and 2 reported poor quality of information. As best can be identified, no other organization has undertaken efforts to determine the nature and timeliness of information describing public participation activities in the context of forest resources. Those which have been undertaken are neither always comprehensive nor capable of being aggregated and usefully summarized. Furthermore the available information often lacks a concerted focus on public participation and information access activities.

There is a relatively small body of empirical research regarding public participation processes, especially in relation to forest and related natural resource issues. In large measure this void stems from problems in defining the intent and appropriate scope of public participation and the lack of consistency in measures (standards) for judging the success of public participation processes. Even though many have offered generic criteria to assess public participation processes (Carr and Halverson 2001, Cortner 1995, Shindler and others 1999, Smith and McDonough 2001, Tuler and Webler 1999), the results of research using such criteria often remain unclear and indeterminate. Numerous studies have examined public participation in a case study format, but little compilation of these studies has occurred. Although very limited, research has also been undertaken to connect conflict management and public participation activities, testing the hypothesis that public participation processes provide a venue in which to constructively manage conflict. As an example, Gerlicke and Sullivan (1994) found that the proportion of forest designated as wilderness and the level of developed recreation use were good predictors of potential levels of conflict, and that the amount of time spent in public participation processes was not a significant factor in predicting levels of conflict.

The information voids concerning public participation and public access to information are numerous and represent significant challenges to research. In a more specific sense, examples of these information voids are as follows:

- *Measurement Information* – Variables that are appropriate for measuring the extent and effectiveness of public participation processes have not been identified and subsequently assembled. What are the goals of these processes and how does that affect variables and measurement techniques applied to them? Do different goals lend themselves to the use of different variables and approaches to measurement? Can the variables used to measure the processes be compared when applied to different processes? How are these variables to actually be measured?

- *Extent of Activity Information* – Compilation of the Federal legal framework for public participation as regards forest resources has not been completed, nor has such a compilation been made of State and local legal requirements for public participation. How extensive are local, State, and Federal authorities for public participation? Are these requirements changing over time? How do public participation processes interact between and within levels of government? How often does the public participate in participation processes? What are their expectations and are they being met?

- *Responsible Organization Information* – Public and private entities involved in public participation processes have not been comprehensively and systematically identified. What agencies are involved, what legal authority assigns them responsibility, and is such authority being accurately interpreted? Are there organizational patterns which enhance or hinder the public participation process? Do public participation processes vary between different administering agencies?

- *Coordination Information* – Requirements to coordinate public participation among and between governments has not been assembled. How do differing public participation processes affect coordination of citizen interests across sectors, geography and agencies? Are there legal requirements for coordination? Does the legal framework provide for processes which can be effective mechanisms for cross-sectoral policy integration? Does the legal framework support or constrain collaborative processes in which multisectoral actors come together at multiple levels to formulate and implement policy?

- *Procedure and Specification Information* – Approaches to public participation are many; their type and frequency in use have not been compiled nor assessed, especially as it relates to the use and management of forest resources. What degree of autonomy does the legal framework provide to decision makers when they work within collaborative and participatory processes? How much flexibility is there within the legal framework for different mechanisms of public participation? How prescriptive are the laws and regulations (for example, how to conduct public participatory meetings)?

- *Effectiveness Information* – Effectiveness of public participation processes has received only limited attention, and where so it has been assembled in a piecemeal fashion. What indicators should be measured to determine effectiveness? Do such indicators of effectiveness vary from process to process and from entity to entity? What outcomes might be expected from participatory democratic processes versus a representative democratic process? Are some processes more effective in certain situations than in others (collaborative versus public hearings, legislative versus judicial involvement of citizens)? What types of monitoring components might be appropriate to determining the long-term consequences of public participation?

Recommendations

The ability to influence forest sustainability will depend a great deal on the public's access to information and to agency decisionmaking processes as suggested by Indicator 50. In order to improve the institutional setting within which such will occur, there are a variety of information voids that need to be addressed (examples described directly above). In order to suitably deal with them, the following actions would seem appropriate.

- *Comprehensive periodic reviews.* Conduct periodic and comprehensive reviews of current authorities that give direction and resources to public participation processes and public access to information. Guided by the above suggested information deficiencies, the reviews should give special attention to the collection of information concerning the different types of public participation processes, organizations that implement them, and the effect of participatory activities on the accomplishment of desired forest values. This information should be gathered to the extent it occurs at Federal, State, and local levels of government.

- *Responsibility for conducting reviews.* Since no single source of information exists on forest-related public participation activities, assign responsibility for conducting reviews (on a continuous basis) of these activities to a specific (current or new) administrative unit located within a Federal agency (Forest Service's Programs and Legislation Unit, State and Private Forestry, or Research and Development), a college or university, or other nonprofit organization (for example, Pinchot Institute for Forest Conservation, National Association of State Foresters). This responsibility should be assigned to an organization that has a proven track record in addressing the complexities of developing and implementing enforcement programs involving forests and their sustainability.

- *Devote resources to reviews.* Invest in the review of sufficient resources (financial and personnel) as are necessary to provide the type and quantity of information necessary to dramatically improve understanding of current abilities to develop and implement public participation activities considered important to sustainable forestry.

Indicator Appropriateness

Indicator Definition

Analysis of the legal capacity to engage in activities suggested (or eluded to) by Indicator 50 is hampered by words or phrases that are unclear in concept or definition. Examples are “public,” “public participation,” public policy,” “decisionmaking,” and “public access to information.” These words or phrases supposedly are grounded in an agreed to set of concepts that serve as a useful guide to information gathering efforts. For this indicator, such is not always the case as is highlighted by the term “public,” which at times is considered to be those affected or interested in a pending resource decision, while at other times is use to describe society in general. Also troubling is the inclusion in the indicator of the phrase “. . . [opportunities for] public access to information . . .” “Discussion of information regarding public access to information is probably better considered as part of Indicator 53 (public involvement activities and public education). To improve its usefulness as an index of forest sustainability, consideration should be given to rewording Indicator 50 to a form such as “. . . *provides opportunity for citizens to participate, in an informed manner, in decisions affecting forests.*”

Cross-Cutting Conditions

There are a number of crosscutting issues regarding Indicator 50. Some have a clear and direct relationship such as 48 (property rights), 49 (planning), 51 (best practice codes), 52 (special values), 53 (public involvement and education), and 66 (impacts of human intervention). Other crosscutting issues are less direct but merit mention and include 38 (investment in forests), 39 (investment in research), 40 (new technologies), 57 (enforcement), 61 (inventory information), 63 (scientific understanding), and 64 (integrative value methods).

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